



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

ORAL SUBMISSION

General Intelligence Laws Amendment Bill (GILAB)

PRESENTED BY
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OVERVIEW

01 Context and Origins

02 Key Concerns

03 Potential Impact

04 Proposed Actions

05 Acknowledgements

06 Sources and Further Reading

07 Final Remarks

CONTEXT AND ORIGINS

The General Intelligence Laws Amendment Bill (NA) (2023) arises from critical assessments of the State Security Agency (SSA) following revelations from the State Capture Commission Report and the High-Level Review Panel. These reports unveiled systemic failures, abuse of power, and a lack of accountability within the SSA, prompting the need for legislative reforms. While the proposed amendments aim to overhaul existing legislation governing intelligence agencies, concerns linger regarding the concentration of discretionary powers within the office of the Cabinet Minister, contradicting recommendations from the High-Level Review Panel.

KEY CONCERNS

Vague Definitions

The Bill's definitions lack precision and clarity, potentially enabling abuse of power and infringement of civil liberties.

Discretionary Powers

Significant discretionary powers conferred upon the Director-General and the Minister raise accountability and checks and balances concerns.

Privacy Concerns

Ambiguity surrounding the Bill's definition of "intelligence gathering" threatens constitutional privacy rights.

Foreign Bulk Interception

Appointment of retired judges for oversight and lack of clarity on surveillance scope pose risks to individual rights

Reference to Unconstitutional Legislation

Appointment of retired judges for oversight and lack of clarity on surveillance scope pose risks to individual rights

VAGUE DEFINITIONS

- The definition of "national security"
- S1(o) - "threat to national security' includes any action or omission which may potentially cause damage, harm or loss to the national security."
- The definition of "threat" -
- "S1(t)(b) - A threat is defined as "any activity that seeks to harm the advancement and promotion of peace and harmony" "
- To be interpreted with regards to Section 198 of the Constitution - it does not restrict the definition in any way.

DISCRETIONARY POWERS

The bill confers significant discretionary powers upon both the Director-General and the Minister. The entire intelligence agency, its appointments, regulations, and powers to grant approval and blacklist people are all entrusted to the Minister.





In order to allow the Executive to effectively perform its duties, the Minister is required to have wide-reaching powers but a balance must be imposed in terms of checks and balances to protect the public from abuse of power.

PRIVACY CONCERNS

The Bill's definition of "intelligence gathering" raises significant privacy concerns. The ambiguity surrounding the scope of surveillance activities brings into question the effect of the constitutional right to privacy and the integrity of democratic institutions.



2. What is your top concern?

	"Vetting"	[6,031 selected]	25.86%
	My right to privacy	[12,066 selected]	51.73%
	Mass surveillance of all South Africans' communications	[4,205 selected]	18.03%
	Other	[928 selected]	3.98%
	No Concern	[96 selected]	0.41%

Source: <https://cdn.dearsouthafrica.co.za/wp-content/uploads/2024/02/20183124/GILAB-%E2%80%93-Report->

[DearSouthAfrica.pdf? gl=1*1t5t20* ga*NTAzNjY4NjAxLjE3MTMyNTMyNDg.* ga_DZFBJKSYJ5*MTcxMzUwODI2NS4zLjEuMTcxMzUwODMxMS4xNC4wLjA.& ga=2.254209032.16085](https://cdn.dearsouthafrica.co.za/wp-content/uploads/2024/02/20183124/GILAB-%E2%80%93-Report-)

[3350.1713508267-503668601.1713253248](https://cdn.dearsouthafrica.co.za/wp-content/uploads/2024/02/20183124/GILAB-%E2%80%93-Report-)

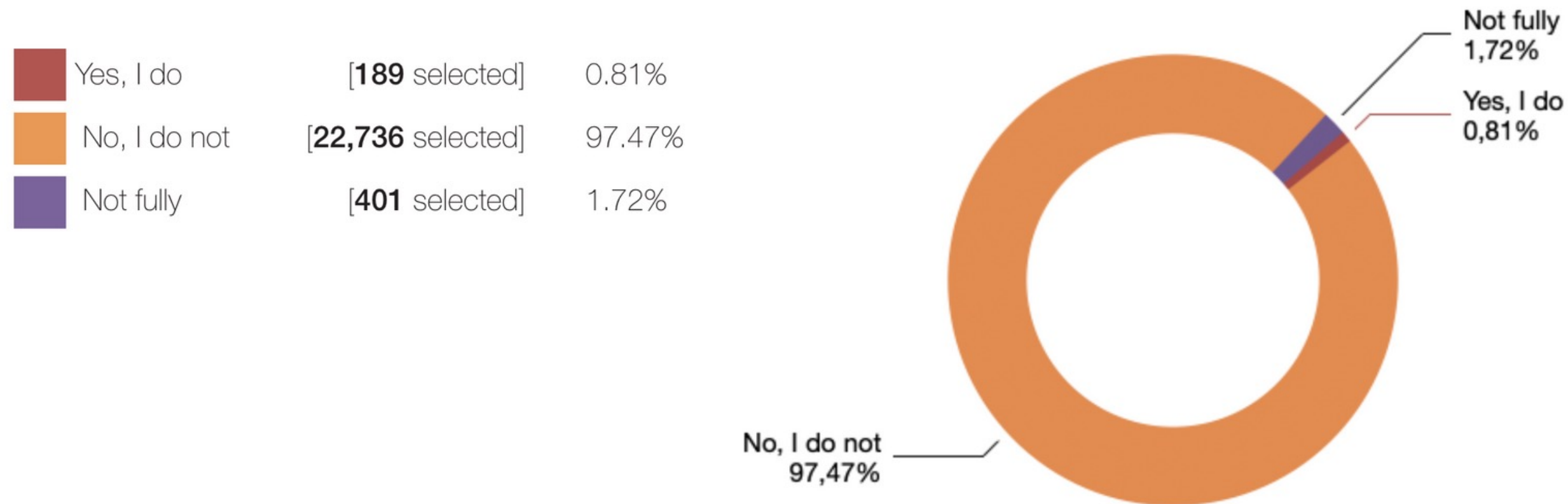
Bavesh Padayachy (GRCA) – 19/04/2024 15:20

PRIVACY CONCERNS



Two questions presented;

1. Do you support the General Intelligence Laws Amendment (Spy) Bill?



Source:https://cdn.dearsouthafrica.co.za/wp-content/uploads/2024/02/20183124/GILAB-%E2%80%93-Report-DearSouthAfrica.pdf?gl=1*1t5t20*ga*NTAzNjY4NjAxLjE3MTMyNTMyNDg.*ga_DZFBJKSYJ5*MTcxMzUwODI2NS4zLjEuMTcxMzUwODMxMS4xNC4wLjA.&ga=2.254209032.160853350.1713508267-503668601.1713253248

FOREIGN BULK INTERCEPTION

"S2B(1) The Centre shall, in a prescribed manner, and with regard to foreign signals, communications and non-communications— (a) gather, correlate, evaluate and analyse relevant intelligence in order to identify any threat to national security subject to— (i) submission of bulk interception application for approval by a retired Judge appointed by the President, after consultation with the Chief Justice;"

Doctrine of Separation of Powers - Is it in the best interest of the role of the Judiciary to have a former judge?

Ref: *Heath v President of the Republic of South Africa* - The Constitutional Court held that there must be an absolute separation between the Judiciary and other branches of Government

REFERENCE TO UNCONSTITUTIONAL LEGISLATION

"2D Surveillance arising from bulk interception (1) If whilst conducting bulk interception, it becomes necessary to engage in surveillance of a citizen of the Republic of South Africa whether within or outside of the Republic, the Centre must comply with the procedure envisaged in the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 to obtain the requisite approval."

The Bill needs to specify which sections of RICA it makes reference to since the Constitutional Court ruled that it fails to adequately protect the right to privacy, access to courts, freedom of expression and the media, and legal privilege.

IMPLICATIONS FOR DEMOCRACY AND CONSTITUTIONAL RIGHTS

By expanding the powers of intelligence agencies without adequate safeguards and oversight mechanisms, the Bill risks undermining the principles of accountability, transparency, and the rule of law.

Vague and overbroad definitions contained in the Bill pose significant threats to civil liberties, including the right to freedom of expression, association, and privacy. There is a real danger of government overreach and abuse of power, particularly in the context of political dissent and opposition.

The concentration of discretionary powers without effective checks and balances, there is a heightened risk of executive overreach and authoritarianism, posing a direct threat to the democratic fabric of South Africa.

RECOMMENDATIONS

- a. Clarification of Definitions;**
- b. Limitation of Discretionary Powers;**
- c. Safeguarding Privacy Rights;**
- d. Enhancing Judicial Oversight; and**
- e. Alignment with Constitutional Principles.**

CONCLUSION

In conclusion, the General Intelligence Laws Amendment Bill (NA) (2023) represents a critical juncture in South Africa's legislative journey, with profound implications for democracy, human rights, and the rule of law. As custodians of the public interest, Parliament has a duty to scrutinize the bill rigorously and ensure that it upholds constitutional principles and values.

By addressing the concerns outlined in this submission and adopting the recommended amendments, Parliament can demonstrate its commitment to democratic governance, transparency, and accountability in the intelligence sector. Failure to address these issues risks eroding public trust in the government and undermining the foundations of democracy in South Africa.

ACKNOWLEDGEMENTS

I extend gratitude to the Members of the Ad-hoc Committee, members of the legislature, academics, individuals and organizations whose research and insights contributed to the preparation of this submission. Their dedication to promoting transparency, accountability, and human rights in South Africa is invaluable in shaping our legislative process.

SOURCES AND FURTHER READING

For further information and analysis, please refer to the following sources:

(a) Daily Maverick article dated March 26, 2024, titled "Controversial Intelligence Laws Overhaul Rapidly Approved by MPs."

(b) Parliamentary Monitoring Group (PMG) website for the text of the bill and related documents.

(c) Official document of the General Intelligence Laws Amendment Bill (NA) (2023).

(d) Dear South Africa website for additional insights on the bill.

(e) Bowman's Law article discussing the introduction of the intelligence legislation to Parliament.

(f) Business Tech article featuring expert opinions on the implications of the new spy bill.

(g) Constitutionally Speaking analysis critiquing the bill as anti-democratic and misguided.

FINAL THOUGHT

“In a constitutional democracy – unlike in a national security state – national security should not have anything to do with lawful political activity, advocacy, protest or dissent, regardless of whether such activities challenge or seek to undermine supposed shared values or national interests.”

- Prof P De Vos -

THANK YOU